

# SPECIMEN COPY

## SOFTWARE AGREEMENT

between

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

and

for

UNIX\* SYSTEM III

Effective as of

\*UNIX is a trademark of Bell Laboratories.

SOFTWARE AGREEMENT

SPECIMEN COPY

Effective as of  
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, a New York  
corporation ("AT&T"), having an office at 195 Broadway, New York, New York  
10007, and

("LICENSEE"), having an office at

agree as follows:

ARTICLE I

DEFINITIONS

1.01 Terms in this agreement (other than names of parties and Article headings) which are in capital letters shall have the meanings specified in the Definitions Appendix.

ARTICLE II

GRANTS OF RIGHTS TO USE LICENSED SOFTWARE

2.01 (a) AT&T, at the request of LICENSEE, grants to LICENSEE, for itself and its SUBSIDIARIES, a personal, nontransferable and nonexclusive right to use the LICENSED SOFTWARE, solely for its own or its SUBSIDIARIES' internal business purposes and solely on or in conjunction with SOURCE CPUs and OBJECT CPUs; except that only OBJECT SOFTWARE may be used on or in conjunction with an OBJECT CPU.

(b) A single back-up CPU may be used as a substitute for a SOURCE CPU or an OBJECT CPU without notice to AT&T during any time when such a CPU is inoperative because it is malfunctioning or undergoing repair, maintenance or other modification.

(c) LICENSEE may at any time notify AT&T in writing of its designation by location, type and serial number of any replacing or additional CPU that is to become a SOURCE CPU or an OBJECT CPU, any CPU to be replaced, and any OBJECT CPU that is to be changed to a SOURCE CPU. Any such designation shall become effective on agreement thereto by AT&T in writing and receipt by AT&T of the appropriate fee, if any, specified in Section 3.02. In certain cases the fee pursuant to Section 3.02(b) for a particular CPU to become a SOURCE CPU can be less than the fee pursuant to Section 3.02(c) for such CPU to become an OBJECT CPU. In those cases such CPU may only become a SOURCE CPU.



SPECIMEN COPY

No right is granted for the use of the LICENSED SOFTWARE directly for any third person, or for any use by any third person of the LICENSED SOFTWARE.

2.02 Subject to receipt by AT&T of the payment specified in Section 3.01, within a reasonable time after such receipt, AT&T or one of its ASSOCIATED COMPANIES shall furnish to LICENSEE the LICENSED SOFTWARE in the form identified in the Schedule for UNIX\* System III attached hereto and made a part hereof.

2.03 LICENSEE agrees that neither it nor its SUBSIDIARIES will, without the prior written consent of AT&T, transmit, directly or indirectly, the LICENSED SOFTWARE to any country outside of

2.04 LICENSEE hereby assures AT&T that it and its SUBSIDIARIES do not intend to and will not knowingly, without the prior written consent, if required, of the Office of Export Administration of the U.S. Department of Commerce, Washington, D.C. 20230, transmit, directly or indirectly:

- (i) the LICENSED SOFTWARE; or
- (ii) any immediate product (including processes and services) produced directly by the use of the LICENSED SOFTWARE; or
- (iii) any commodity produced by such immediate product if the immediate product of the LICENSED SOFTWARE is a plant capable of producing a commodity or is a major component of such plant;

to Afghanistan or to any Group P, Q, S, W, Y or Z country specified in Supplement No. 1 to Section 370 of the Export Administration Regulations issued by the U.S. Department of Commerce.

2.05 LICENSEE agrees that its and its SUBSIDIARIES' obligations under Sections 2.03 and 2.04 shall survive and continue after any termination of rights under this agreement.

---

\*UNIX is a trademark of Bell Laboratories.

ARTICLE III

FEES AND REPORTS

SPECIMEN COPY

3.01 LICENSEE shall, within sixty (60) days after execution hereof by both parties, pay to AT&T a fee of forty-three thousand U.S. dollars (\$43,000.00) for the rights granted hereunder with respect to the CPU identified by location, type and serial number as follows:

On receipt of such payment by AT&T, such CPU shall become a SOURCE CPU. Such fee was determined on the basis that LICENSEE is not licensed to use OTHER SOFTWARE on such CPU.

3.02 (a) For each SOURCE CPU to be added pursuant to Section 2.01(c) and on which LICENSEE is not licensed to use OTHER SOFTWARE, LICENSEE shall pay to AT&T a fee of sixteen thousand U.S. dollars (\$16,000.00).

(b) For each SOURCE CPU to be added pursuant to Section 2.01(c) on which LICENSEE is also licensed to use OTHER SOFTWARE, LICENSEE shall pay to AT&T a fee as follows:

| Type of<br>OTHER SOFTWARE | Fee<br>(U.S. Dollars) |
|---------------------------|-----------------------|
| V6                        | \$10,300              |
| V7                        | \$ 7,600              |
| PWB                       | \$ 7,000              |
| 32V                       | \$ 2,000              |
| V6 and V7                 | \$ 6,300              |
| V7 and PWB                | \$ 3,000              |

(c) For each OBJECT CPU to be added pursuant to Section 2.01(c), LICENSEE shall pay to AT&T a fee of four thousand eight hundred U.S. dollars (\$4,800.00).

(d) For each OBJECT CPU that is to be changed to a SOURCE CPU, LICENSEE shall pay to AT&T, a fee determined by subtracting the fee specified in Section 3.02(c) from the fee for such CPU specified in Section 3.02(a) or 3.02(b). This Section 3.02(d) does not apply to a CPU that may only become a SOURCE CPU pursuant to Section 2.01(c).



ARTICLE III  
FEES AND REPORTS

SPECIMEN COPY

3.01 LICENSEE shall, within sixty (60) days after execution hereof by both parties, pay to AT&T a fee of

U.S. dollars (\$ )

for the rights granted hereunder with respect to the CPU identified by location, type and serial number as follows:

On receipt of such payment by AT&T, such CPU shall become a SOURCE CPU. Such fee was determined on the basis that LICENSEE is also licensed to use on such CPU the portion of OTHER SOFTWARE identified as

3.02 (a) For each SOURCE CPU to be added pursuant to Section 2.01(c) and on which LICENSEE is not licensed to use OTHER SOFTWARE, LICENSEE shall pay to AT&T a fee of sixteen thousand U.S. dollars (\$16,000.00).

(b) For each SOURCE CPU to be added pursuant to Section 2.01(c) on which LICENSEE is also licensed to use OTHER SOFTWARE, LICENSEE shall pay to AT&T a fee as follows:

| Type of<br>OTHER SOFTWARE | Fee<br>(U.S. Dollars) |
|---------------------------|-----------------------|
| V6                        | \$10,300              |
| V7                        | \$ 7,600              |
| PWB                       | \$ 7,000              |
| 32V                       | \$ 2,000              |
| V6 and V7                 | \$ 6,300              |
| V7 and PWB                | \$ 3,000              |

(c) For each OBJECT CPU to be added pursuant to Section 2.01(c), LICENSEE shall pay to AT&T a fee of four thousand eight hundred U.S. dollars (\$4,800.00).

(d) For each OBJECT CPU that is to be changed to a SOURCE CPU, LICENSEE shall pay to AT&T a fee determined by subtracting the fee specified in Section 3.02(c) from the fee for such CPU specified in Section 3.02(a) or 3.02(b). This Section 3.02(d) does not apply to a CPU that may only become a SOURCE CPU pursuant to Section 2.01(c).

ARTICLE III

FEES AND REPORTS

SPECIMEN COPY

3.01 LICENSEE shall, within sixty (60) days after execution hereof by both parties, pay to AT&T a fee of

U.S. dollars (\$ )

for the rights granted hereunder with respect to the CPU identified by location, type and serial number as follows:

On receipt of such payment by AT&T, such CPU shall become a SOURCE CPU. Such fee was determined on the basis that LICENSEE is also licensed to use on another CPU the portion of OTHER SOFTWARE identified as

3.02 (a) For each SOURCE CPU to be added pursuant to Section 2.01(c) and on which LICENSEE is not licensed to use OTHER SOFTWARE, LICENSEE shall pay to AT&T a fee of sixteen thousand U.S. dollars (\$16,000.00).

(b) For each SOURCE CPU to be added pursuant to Section 2.01(c) on which LICENSEE is also licensed to use OTHER SOFTWARE, LICENSEE shall pay to AT&T a fee as follows:

| Type of<br>OTHER SOFTWARE | Fee<br>(U.S. Dollars) |
|---------------------------|-----------------------|
| V6                        | \$10,300              |
| V7                        | \$ 7,600              |
| PWB                       | \$ 7,000              |
| 32V                       | \$ 2,000              |
| V6 and V7                 | \$ 6,300              |
| V7 and PWB                | \$ 3,000              |

(c) For each OBJECT CPU to be added pursuant to Section 2.01(c), LICENSEE shall pay to AT&T a fee of four thousand eight hundred U.S. dollars (\$4,800.00).

(d) For each OBJECT CPU that is to be changed to a SOURCE CPU, LICENSEE shall pay to AT&T a fee determined by subtracting the fee specified in Section 3.02(c) from the fee for such CPU specified in Section 3.02(a) or 3.02(b). This Section 3.02(d) does not apply to a CPU that may only become a SOURCE CPU pursuant to Section 2.01(c).



SPECIMEN COPY

(e) For each replacing CPU, unless all rights with respect to LICENSED SOFTWARE and all OTHER SOFTWARE licensed for use on the replaced CPU are transferred to the replacing CPU from the replaced CPU, LICENSEE shall pay to AT&T a fee based on the fees payable hereunder and under any applicable Software Agreement relating to OTHER SOFTWARE. The amount of such fee may be obtained from AT&T by a request specifying the software and CPUs involved.

3.03 Payments to AT&T shall be made in United States dollars to AT&T at the address specified in Section 5.11.

3.04 On AT&T'S request, but not more frequently than annually, LICENSEE shall furnish to AT&T a statement, certified by an authorized representative of LICENSEE, that the use of the LICENSED SOFTWARE by LICENSEE and its SUBSIDIARIES has been reviewed and that the LICENSED SOFTWARE is being used solely on appropriate DESIGNATED CPUs (or temporarily on a back-up CPU in place of any inoperative DESIGNATED CPU) pursuant to the provisions of this agreement.

3.05 LICENSEE shall bear all taxes (and any related interest and penalties), however designated, imposed as a result of the existence or operation of this agreement, including, but not limited to, any tax upon, with respect to or measured by, any payment or receipt of payment hereunder and any tax imposed with respect to the granting or transfer of rights or considerations hereunder. Fees specified in this agreement are exclusive of any taxes which AT&T may be required to collect from LICENSEE and LICENSEE shall make payment of such taxes to AT&T on demand.

#### ARTICLE IV

#### TERMINATION

4.01 If LICENSEE or any of its SUBSIDIARIES shall fail to fulfill one or more of its obligations under this agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination AT&T shall not have any obligation to refund any fees paid it pursuant to Sections 3.01 and 3.02 and LICENSEE shall within thirty (30) days deliver to AT&T all documentation containing the LICENSED SOFTWARE, and shall render unusable all LICENSED SOFTWARE placed in any storage apparatus.

(F)

Sys. III-Corp.-110181-040182-4, Alt.

SPECIMEN COPY

(e) For each replacing CPU, unless all rights with respect to LICENSED SOFTWARE and all OTHER SOFTWARE licensed for use on the replaced CPU are transferred to the replacing CPU from the replaced CPU, LICENSEE shall pay to AT&T a fee based on the fees payable hereunder and under any applicable Software Agreement relating to OTHER SOFTWARE. The amount of such fee may be obtained from AT&T by a request specifying the software and CPUs involved.

3.03 Payments to AT&T shall be made in United States dollars to AT&T at the address specified in Section 5.11.

3.04 On AT&T'S request, but not more frequently than annually, LICENSEE shall furnish to AT&T a statement, certified by an authorized representative of LICENSEE, that the use of the LICENSED SOFTWARE by LICENSEE and its SUBSIDIARIES has been reviewed and that the LICENSED SOFTWARE is being used solely on appropriate DESIGNATED CPUs (or temporarily on a back-up CPU in place of any inoperative DESIGNATED CPU) pursuant to the provisions of this agreement.

3.05 LICENSEE shall bear all taxes (and any related interest and penalties), however designated, imposed as a result of the existence or operation of this agreement, including, but not limited to, any tax upon, with respect to or measured by, any payment or receipt of payment hereunder, any registration tax, any tax imposed with respect to the granting or transfer of rights or considerations hereunder, and any tax which LICENSEE is required to withhold or deduct from payments to AT&T, except (i) any such tax imposed upon AT&T by any governmental entity in the United States, and (ii) any such tax imposed upon AT&T in the country in which the aforesaid office of LICENSEE is located if such tax is allowable as a credit against United States income taxes of AT&T. To assist AT&T in obtaining such credit, LICENSEE shall furnish AT&T with such evidence as may be required by United States taxing authorities to establish that any such tax has been paid. Fees specified in this agreement are exclusive of any taxes which AT&T may be required to collect from LICENSEE and LICENSEE shall make payment of such taxes to AT&T on demand.

#### ARTICLE IV

#### TERMINATION

4.01 If LICENSEE or any of its SUBSIDIARIES shall fail to fulfill one or more of its obligations under this agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination AT&T shall not have any obligation to refund any fees paid it pursuant to Sections 3.01 and 3.02 and LICENSEE shall within thirty (30) days deliver to AT&T all documentation containing the LICENSED SOFTWARE, and shall render unusable all LICENSED SOFTWARE placed in any storage apparatus.



ARTICLE V

MISCELLANEOUS PROVISIONS

SPECIMEN COPY

5.01 Nothing contained herein shall be construed as conferring by implication, estoppel or otherwise any license or right under any patent or trademark, whether or not the exercise of any right herein granted necessarily employs an invention of any existing or later issued patent.

5.02 This agreement shall prevail notwithstanding any conflicting terms or legends which may appear in the LICENSED SOFTWARE.

5.03 AT&T and its ASSOCIATED COMPANIES make no representations or warranties, expressly or impliedly. By way of example but not of limitation, AT&T and its ASSOCIATED COMPANIES make no representations or warranties of merchantability or fitness for any particular purpose, or that the use of the LICENSED SOFTWARE will not infringe any patent, copyright or trademark. AT&T and its ASSOCIATED COMPANIES shall not be held to any liability with respect to any claim by LICENSEE, its SUBSIDIARIES, or a third party on account of, or arising from, the use of such LICENSED SOFTWARE.

5.04 LICENSEE agrees that neither LICENSEE nor its SUBSIDIARIES will, without AT&T'S express written permission, (i) use in advertising, publicity, packaging, labeling or otherwise any trade name, trademark, trade device, service mark, symbol or any other identification or any abbreviation, contraction or simulation thereof owned by AT&T or any of its ASSOCIATED COMPANIES or used by AT&T or any of its ASSOCIATED COMPANIES to identify any of its or their products or services, or (ii) represent, directly or indirectly, that any product or service of LICENSEE or its SUBSIDIARIES is a product or service of AT&T or any of its ASSOCIATED COMPANIES, or is made in accordance with or utilizes any information or documentation of AT&T or any of its ASSOCIATED COMPANIES.

5.05 Neither the execution of this agreement nor anything in it or in the LICENSED SOFTWARE shall be construed as (i) an obligation upon AT&T or any of its ASSOCIATED COMPANIES to furnish any person, including LICENSEE and its SUBSIDIARIES, any assistance of any kind whatsoever, or any information or documentation other than the LICENSED SOFTWARE; or (ii) providing or implying any arrangement or understanding that AT&T or any of its ASSOCIATED COMPANIES will make any purchase or lease.

5.06 (a) LICENSEE agrees that it and its SUBSIDIARIES shall hold the LICENSED SOFTWARE in confidence for AT&T and its ASSOCIATED COMPANIES. LICENSEE further agrees that it and its SUBSIDIARIES shall not make any disclosure of the LICENSED SOFTWARE (including methods or concepts utilized therein) to anyone, except to employees of LICENSEE and its SUBSIDIARIES to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE and its SUBSIDIARIES shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by him.

SPECIMEN COPY

(b) Notwithstanding the provisions of Section 5.06(a), LICENSEE may distribute its version of LICENSED SOFTWARE to other licensees of AT&T for LICENSED SOFTWARE as defined herein, provided that LICENSEE first verifies the status of any such other licensee in accordance with specific instructions issued by AT&T. Such instructions may be obtained on request from AT&T at the address specified in Section 5.11.

5.07 The obligations of LICENSEE, its SUBSIDIARIES and their respective employees under Section 5.06(a) shall survive and continue after any termination of rights under this agreement or cessation of a SUBSIDIARY'S status as a SUBSIDIARY; however, such obligations shall not extend to any information relating to the LICENSED SOFTWARE which is now available to the general public or which later becomes available to the general public by acts not attributable to LICENSEE, its SUBSIDIARIES or their respective employees.

5.08 LICENSEE agrees that it and its SUBSIDIARIES will not use the LICENSED SOFTWARE except as authorized herein, that it and its SUBSIDIARIES will not make or have made, or permit to be made, any copies of the LICENSED SOFTWARE, except those copies which are necessary to the use, by LICENSEE and its SUBSIDIARIES, for which rights are granted hereunder, that each such necessary copy shall contain the same proprietary notices or legends which appear on the LICENSED SOFTWARE, and that no rights are granted under this agreement expressly or impliedly with respect to any copyrights except as provided for in this Section 5.08.

5.09 Neither this agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable.

5.10 Except as provided in Section 5.06(b), nothing in this agreement grants to LICENSEE or to its SUBSIDIARIES the right to sell, lease or otherwise transfer or dispose of the LICENSED SOFTWARE in whole or in part.

5.11 Any payment, statement, notice, request or other communication hereunder shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office above specified or addressed to AT&T at P.O. Box 25000, Greensboro, North Carolina 27420 (to the attention of its Technology Licensing Organization), or at such changed address as the addressee shall have specified by written notice.

5.12 This agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein, or in any prior existing written agreement between the parties, or as duly set forth on or subsequent to the effective date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby.

5.13 If LICENSEE is not a corporation, all references to LICENSEE'S SUBSIDIARIES shall be deemed deleted.

5.14 The construction and performance of this agreement shall be governed by the law of the State of New York.



SPECIMEN COPY

IN WITNESS WHEREOF, each of the parties has caused this agreement to be executed in duplicate originals by its duly authorized representatives on the respective dates entered below.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By .....

Date.....

By .....

Title.....

Date.....

SPECIMEN COPY

DEFINITIONS APPENDIX

ASSOCIATED COMPANIES of AT&T means SUBSIDIARIES of AT&T, Cincinnati Bell Inc., an Ohio corporation, and The Southern New England Telephone Company, a Connecticut corporation, and their SUBSIDIARIES.

COMPUTER PROGRAM means any instruction or instructions in source code or object code for controlling the operation of a CPU.

CPU means central processing unit.

DESIGNATED CPU means any SOURCE CPU or OBJECT CPU.

LICENSED SOFTWARE means all or any portion of the COMPUTER PROGRAMS, other information and documentation specifically listed in the attached Schedule for UNIX System III and any COMPUTER PROGRAM, other information, or documentation derived from any of the material listed in such Schedule.

OBJECT SOFTWARE means all or any portion of the LICENSED SOFTWARE comprising the COMPUTER PROGRAMS and other information listed in the section entitled "Object Software" and the documentation listed in the sections entitled "Printed Documentation" and "On-line Documentation" in the attached Schedule for UNIX System III. The term also means any COMPUTER PROGRAM in object code and any other information that is used or interpreted by any such COMPUTER PROGRAM, to the extent such COMPUTER PROGRAM or other information is derived from any of the material listed in such Schedule.

OBJECT CPU means any CPU that becomes such pursuant to Section 2.01(c).

OTHER SOFTWARE means, with respect to a CPU, any of the following types of software for which LICENSEE is also licensed (other than solely for use of machine language on such CPU) pursuant to another Software Agreement between AT&T or Western Electric Company, Incorporated, a New York corporation, and LICENSEE:

UNIX Time Sharing Operating System, Sixth Edition ("V6")

UNIX Time-Sharing System, Seventh Edition ("V7")

PWB/UNIX Time Sharing Operating System, Edition 1.0 ("PWB")

UNIX/32V Time-Sharing System, Version 1.0 ("32V")

SOURCE CPU means any CPU that becomes such pursuant to Section 2.01(c) or Section 3.01.

SUBSIDIARY means a company the majority of whose stock entitled to vote for election of directors is now or hereafter controlled by the parent company either directly or indirectly, but any such company shall be deemed to be a SUBSIDIARY only so long as such control exists.